

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM REVOAL,

Plaintiff,

v.

BAKERSFIELD MEDICAL CENTER, et
al.,

Defendants.

1:22-cv-00801-ADA-SKO (PC)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY
DISMISSAL**

(Doc. 19)

Plaintiff William Revoal is a former state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

On June 7, 2023, this Court issued its First Screening Order. (Doc. 14.) The Court found Plaintiff's complaint failed to state a claim upon which relief could be granted. (*Id.* at 4-10.) Plaintiff was ordered to either file a first amended complaint or a notice of voluntary dismissal within 21 days of the date of service of the order. (*Id.* at 11.)

On July 10, 2023, after Plaintiff failed to file either a first amended complaint or a notice of voluntary dismissal, the Court issued Findings and Recommendations to Dismiss Action for Failure to Obey Court Orders and Failure to Prosecute. (Doc. 16.) Plaintiff was to file any objections within 14 days of the date of service. (*Id.* at 4.)

On July 17, 2023, Plaintiff filed a Notice of Change of Address. (Doc. 17.) That same date, the Clerk of the Court re-served Plaintiff with the Findings and Recommendations issued

1 July 10, 2023, to his new address. (*See* Docket Entry dated 7/17/23.)

2 On August 7, 2023, this Court issued its Order Vacating Findings and Recommendations
3 to Dismiss Action for Failure to Obey Court Orders and Failure to Prosecute, and Order Granting
4 Extension of Time Within Which to File Notice of Voluntary Dismissal or First Amended
5 Complaint. (Doc. 18.)

6 On August 16, 2023, Plaintiff filed a document titled “Plaintiff Motion For Voluntary
7 Dismissal.” (Doc. 19.)

8 **II. DISCUSSION**

9 As previously noted by the Court in its August 7, 2023, Order, “it is apparent Plaintiff
10 intends to seek the assistance of counsel to ‘refile’ this action.” (Doc. 18 at 2.) In that order, the
11 Court advised Plaintiff “that by filing a notice of voluntary dismissal pursuant to Federal Rule of
12 Civil Procedure 41(a)(1)(A)(i) ... the dismissal would be without prejudice and would not bar
13 Plaintiff from refiling this claim or claims in a subsequent action should he obtain legal counsel
14” (*Id.* at 2-3.) Plaintiff was afforded 21 days within which to file a notice of voluntary
15 dismissal or, alternatively, to file a first amended complaint. (*Id.* at 3.)

16 Plaintiff timely filed his request that this action be voluntarily dismissed, noting again his
17 intent to seek legal representation. (Doc. 19.) The Federal Rules of Civil Procedure permit a
18 plaintiff to file “a notice of voluntary dismissal before the opposing party serves either an answer
19 or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). “[U]nder Rule 41(a)(1)(A)(i),
20 ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant
21 of an answer or a motion for summary judgment.’” *Commercial Space Mgmt. Co., Inc. v. Boeing*
22 *Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688,
23 692 (9th Cir. 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to dismiss
24 without a court order any defendant who has yet to serve an answer or motion for summary
25 judgment. *Pedrina v. Chun*, 987 F.2d 608, 609 (9th Cir. 1993). “[A] dismissal under Rule
26 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action
27 had been brought, the defendant can’t complain, and the district court lacks jurisdiction to do
28 anything about it.” *Commercial Space Mgmt. Co., Inc.*, 193 F.3d at 1078.

1 Here, no defendant has been served, nor has an answer or other responsive pleading been
2 filed by any defendant. Thus, Plaintiff is entitled to the voluntary dismissal he seeks.

3 **III. CONCLUSION AND ORDER**

4 Accordingly, the Clerk of the Court is **HEREBY ORDERED** to terminate any pending
5 motions or deadlines and to close this case.

6
7 IT IS SO ORDERED.

8 Dated: **August 17, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE